



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 7 and 9

[EPA-HQ-OA-2013-0031, FRL-9933-69-OA]

RIN 2090-AA39

Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its regulations with regard to compliance information, post-award compliance reviews, and complaint investigations. This proposed rule will improve the EPA's ability to ensure that recipients of federal financial assistance comply with their affirmative obligation under the Civil Rights Act of 1965 and other nondiscrimination statutes not to discriminate, while also ensuring that the EPA has sufficient flexibility and discretion to carry out its nondiscrimination compliance work.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OA-2013-0031, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions

for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeryl Covington or Helena Wooden-Aguilar, U.S. Environmental Protection Agency, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, telephone (202) 564-7272, (202) 564-7713 or (202) 564-0792.

SUPPLEMENTARY INFORMATION:

I. Background Information

The EPA is proposing to amend its regulations implementing title VI of the Civil Rights Act of 1964 (“Title VI”), section 504 of the Rehabilitation Act of 1973 (“Section 504”), section 13 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), and the Age Discrimination Act of 1975 (“Age Discrimination Act”) in order to enable it to create a model

civil rights program which can nimbly and effectively enforce civil rights statutes in the environmental context. Together, these statutes prohibit discrimination on the basis of race, color, national origin, (including discrimination based on language ability or limited English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance. This rulemaking proposes to amend subpart D (Requirements for Applicants and Recipients) and subpart E (Agency Compliance Procedures) provisions regarding compliance information, post-award compliance reviews, and complaint investigations. This rulemaking also proposes to make a technical correction to subpart D to remove citations to expired Office of Management and Budget (OMB) control numbers and to place the current OMB control number for information collection requests under 40 CFR part 7 in the consolidated list of OMB approvals under the Paperwork Reduction Act in 40 CFR part 9.

Applicants for and recipients of EPA assistance already are obligated to comply with Title VI and other nondiscrimination statutes as a condition of receiving EPA assistance. This proposed rule is consistent with the broad discretion that, as recognized by the Supreme Court, has been afforded all federal agencies with regard to the enforcement of federal nondiscrimination obligations,¹ and is part of a package of efforts intended to improve EPA's civil rights program. One effort, for example, is the draft External Compliance and Complaints Program Strategic Plan, which was published for comment on September 10, 2015 (<http://www.epa.gov/ocr/external-compliance-title-vi-new-developments>). This package, as a whole, will increase transparency and accountability and move EPA closer to its goal of establishing a model civil rights program. This proposed rule – another part of the package –

¹ See *Alexander v. Choate*, 469 U.S. 287, 293-294 (1985); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940).

will assist the EPA in continuing to be more proactive in monitoring and enforcing recipients' compliance with Title VI and other nondiscrimination statutes.

The EPA has sought to improve its External Compliance and Complaints Program. In 2009, EPA made a commitment to strengthen and revitalize EPA's civil rights program. In addition to increasing staff, securing additional training and improving processes, as part of that effort, in 2010, EPA funded an independent in-depth evaluation of its civil rights program by the firm Deloitte Consulting LLP. Following receipt of the evaluation, the Administrator established an internal Civil Rights Executive Committee to review Deloitte's evaluation, and other sources of information, and make recommendations for building a model civil rights program for EPA. The Executive Committee posted its draft report for public review in February 2012, and the Administrator approved the final report and recommendations on April 13, 2012.

One of the Executive Committee's recommendations was for the EPA to be more proactive in terms of achieving compliance with Title VI and other nondiscrimination obligations by, in part, analyzing data and information obtained from recipients and developing consistent processes. Accordingly, as part of its efforts to create a robust pre- and post- award compliance program (as identified in the EPA Draft EJ 2014 Plan Supplement dated April 12, 2012), the EPA began the process of reevaluating its regulations to identify what data and information it currently obtains from recipients. The EPA first looked to other federal agencies for their best practices in terms of an External Compliance and Complaints Program. Specifically, the EPA evaluated its External Compliance and Complaints Program by comparing its Title VI and other nondiscrimination regulations to those of over twenty other federal agencies. The EPA found that the other agencies' regulations were the same or extremely similar, while the EPA's regulations were different. Many of these other agencies have successful external compliance programs because,

in part, their regulations provide for a robust compliance program, (including routine access to recipient data through compliance reports and compliance reviews), and explicitly affirm the agency's discretion to appropriately tailor complaint resolution paths based on the nature and complexity of the allegations presented. While some aspects of EPA's External Compliance and Complaints Program will continue to have unique characteristics that are tailored to EPA's needs, the EPA, recipients, complainants, and industry will benefit from the predictability, consistency and familiarity arising from this effort to conform these aspects of the EPA's regulations with regulations promulgated by other federal agencies with a record of proven success and with the Department of Justice's Coordination Regulations at 28 CFR part 42, subpart F. Thus, this proposed rule will give the EPA a similar level of flexibility and discretion as is afforded to other federal agencies when collecting compliance information, conducting post-award compliance reviews, and investigating complaints.

Finally, these amendments recognize that the EPA's current, self-imposed regulatory deadlines are impracticable given the inherent scientific complexity associated with determining which and how populations are impacted by environmental pollutants; the number of discrimination allegations and theories that may be asserted in any one complaint under Title VI or the other nondiscrimination statutes; and the volume of the complaints received. Indeed, there are several examples of the analytical and logistical complexity of discrimination complaints historically filed with the EPA on its website. For instance, in one case alleging disparate health impacts, the EPA developed a pesticide exposure analysis to predict daily air concentrations of a specific pesticide at different distances from an application site, based on information concerning the amount of the pesticide applied during a seven-year period. In order to conduct such an analysis, the EPA had to gather and enter the available raw data into a database and then have the

appropriate scientific models created that took into account several factors including, time of day, location, wind speed, proximity and temperature. Next, this analysis was peer reviewed before the EPA was ultimately able to resolve the complaint. The EPA recognizes that not every administrative complaint will require this same level of scientific analysis to determine who is potentially exposed to a particular pollutant. Also, the EPA recognizes that there may be several potential resolution paths, including informal resolution and Alternative Dispute Resolution, even for those cases raising disparate health claims, which the EPA will pursue, when appropriate. By eliminating arbitrary deadlines, the EPA will be better positioned to strategically manage its administrative complaint docket by identifying the specific aspects of individual complaints, such as complaints that present the potential for high-impact resolution. Further, the EPA will be able to explore the best resolution option for those complaints, including tailored goals and benchmarks for specific phases of the individual case, rather than a cookie-cutter approach that assumes all cases should follow the same approach, resolution strategy, and timeframes. Tailoring the appropriate resolution path to each complaint based on the unique factual pattern and legal issues presented, will further allow the EPA to dedicate the appropriate amount of time and resources to resolve each individual complaint.

It is important to note that even with the elimination of the arbitrary deadlines, the EPA must promptly process and investigate complaints. Removal of deadlines will not allow the EPA to unreasonably delay its resolution of complaints because, in part, the definition of a prompt investigation and resolution turns on the factual context of the complaint. Indeed, the language in the proposed rule is subject to judicial review and is consistent with judicial precedent that

recognizes that any investigatory timeframe may be affected by the breadth and complexity of the issues in the complaint.

Thus, based on the entire proposed regulatory amendments that will conform the EPA's regulations to those of more than twenty other federal agencies, the EPA will take another step in its journey to continue to create a model Civil Rights Program. In light of the flexibility, discretion, and accountability for individual cases affirmed by this proposed rule, the EPA will be better able to strategically implement its external civil rights enforcement program to ensure prompt, effective and efficient complaint docket management and to enhance its proactive compliance program.

The EPA is subject to the Department of Justice's Coordination Regulations describing specific implementation, compliance, and enforcement obligations of federal funding agencies under Title VI and similar provisions in federal grant statutes. *See* 28 CFR 42.401 through 42.415. In accordance with 28 CFR 42.403, the EPA submitted this proposed rule to the Assistant Attorney General, Civil Rights Division, Department of Justice, and received her approval. The final rule will be submitted to the Attorney General through the Assistant Attorney General for final approval pursuant to 28 CFR 42.403(c)(3).

II. Overview of This Proposed Rulemaking

A. Sub-part D: Compliance Information Requirements for Recipients of EPA Financial Assistance

The EPA proposes to amend § 7.85(b) by deleting the following text describing when additional information will be sought from recipients—“where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance.” In this same regulatory section, the EPA also proposes deleting “and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.” These changes reaffirm the agency’s existing authority to use compliance reviews to identify and resolve compliance concerns with recipients of EPA financial assistance to prevent costly investigations and litigation. Compliance reviews are an important part of the implementation of all EPA programs and essential to the functioning of comprehensive compliance and enforcement efforts. EPA will work with states and other recipients of financial assistance to ensure that compliance reviews are focused on a review of data and information that is relevant to determining compliance. EPA solicits comments on how to schedule and conduct compliance reviews in ways that minimize unnecessary burdens to both EPA and the recipients.

Further, the revised language is consistent with the regulatory provisions of more than twenty other federal agencies with regard to the routine collection of data and information from recipients. Several of those federal agencies have successful compliance review programs that have been well-established for many years, so the concept of conducting compliance reviews is something with which EPA’s external stakeholders should already have a great deal of familiarity based on engagement with those other federal agencies. In other words, this proposed rule is not a significant change, as it affords the EPA the same discretion and flexibility granted to those agencies in their compliance reviews. Such routine collection is also considered a best practice for Title VI programs as reflected in the Department of Justice’s Coordination Regulations, which require federal agencies to “provide for the collection of data and

information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI,” 28 CFR 42.406(a). Thus, this proposed rule is intended to clarify the EPA’s ability to access such information under the current regulations, while providing the flexibility to establish a successful compliance review program and improve the EPA’s External Compliance and Complaints Program. The EPA is requesting comment on EPA’s proposed modifications to its compliance review regulations; especially its proposed phased-approach to conducting compliance reviews that is discussed in the accompanying cost analysis.

Additionally, this proposed rule gives the EPA discretion to require recipients to submit compliance reports. This proposed rule would, as demonstrated by the successful compliance report programs of sister agencies, be an invaluable tool in prioritizing complaint investigations, selecting recipients for compliance reviews, and conducting targeted outreach to provide technical assistance. Currently, § 7.85 of the regulation imposes an obligation “to collect, maintain, and on request . . . provide” specific information to the EPA. Similarly, § 7.115 notifies recipients that the EPA may request “data and information” pertaining to any recipient’s programs or activities receiving EPA assistance. Consistent with § 7.35, recipients of EPA assistance are also responsible for collecting such reports from any entity through which a recipient operates the program and activity receiving EPA financial assistance, including sub-recipients, licensees, or contractors. In other words, recipients already have a regulatory obligation to collect and maintain relevant information. With this proposed rule, recipients may be asked to submit a report containing the relevant and current information. Adding this proposed rule allows the EPA to more proactively enforce Title VI and other nondiscrimination obligations. This proposed modification makes clear that compliance reports would be required at such times and in such form and containing such information as the EPA may determine to be

necessary to enable the EPA to ascertain whether the recipient has complied or is complying with 40 CFR part 7. The proposed regulation, however, does not identify or prescribe the exact content of such reports. The EPA is requesting written comment on the content, frequency and prioritization of which recipients will be expected to submit compliance reports. During the notice and comment period, the EPA will also engage stakeholders through listening sessions in order to explore the compliance reports process and their content. At this time, the EPA's estimate of the potential burden associated with compliance with this proposed regulation is based on assumptions about what type of information a recipient will be required to include in such a report—from involving the compilation or gathering of pre-existing information, including information specifically identified in the current regulations and Standard Form 4700-4, to including information related to public involvement, limited English proficiency, or data and information demonstrating that the program or activity receiving the EPA assistance complies with its nondiscrimination obligations.

The EPA understands that stakeholders may have questions about what specific information should be contained in such reports. Accordingly, the EPA may continue to request compliance reports related to information gathering in the context of compliance reviews and complaint investigations conducted under §§ 7.110, 7.115, and 7.120. However, the EPA does not intend to request compliance reports, unrelated to compliance reviews and complaint investigations, from recipients any sooner than 90 days after it has drafted guidance about such reports, sought stakeholder input on the guidance, put the guidance out for notice and comment, and finalized the guidance. This process will allow the EPA, recipients, and other stakeholders to work collaboratively to improve the EPA's External Compliance and Complaints Program.

B. Sub-part E: Agency Compliance Procedures.

1. Post-Award Compliance

Under the current regulations, on-site reviews for post-award compliance may occur when the Office of Civil Rights (OCR) “has reason to believe that discrimination may be occurring in such programs or activities.” For the reasons set forth above, the EPA proposes amending 40 CFR 7.110(a) and 7.115(a), to affirm the OCR’s flexibility and discretion to structure how it conducts pre-award and post-award compliance reviews. This modification is consistent with the Title VI regulations of more than twenty other federal agencies.

Additionally, the EPA proposes to remove the provision to provide post-review notice to a recipient within 180 calendar days from the start of a compliance review or complaint investigation pursuant to 40 CFR 7.115(c)(1). Instead of this calendar deadline, the EPA proposes to conform to the regulations of over twenty other federal agencies that state that complaints will be “promptly” investigated. The EPA proposes to adopt this language because it has found that this self-imposed, inflexible deadline is impracticable given the inherent scientific complexity associated with determining which and how populations are impacted by environmental pollutants; the number of discrimination allegations and theories that may be asserted in any one complaint under Title VI or the other nondiscrimination statutes; and the volume of the complaints received. Without the burden of an unrealistic, self-imposed deadline, the EPA will be in a better position to improve the entire External Compliance and Complaints Program, including the compliance review and reports efforts discussed above. Even without this deadline, the EPA still must promptly investigate complaints.

2. Complaint Investigations

This proposed rule removes the introductory text of 40 CFR 7.120 concerning the investigation of “all complaints” and to adopt language, substantially similar to the regulations of other federal agencies, requiring investigation of complaints that “indicate a possible failure to comply.” This change will allow the EPA to prioritize and dedicate resources to complaints that – after an initial review – reveal a possible failure to comply. Yet, the proposed rule does not alter the reasons for rejecting or closing a complaint upon which the EPA and other agencies have relied. Instead, the proposed regulatory language clarifies the agency’s discretion to pursue a path to resolution in light of the particular facts of each case. The EPA seeks to conform to the regulatory text of its sister agencies in order to affirm that it will not seek to impose a one-size fits all approach to resolution. In other words, the proposed rule is intended to reflect that a path to resolution must be tailored to the specific facts of the case and such a path may not be identical for every complaint. Not every complaint, for example, will require the completion of a costly and time-consuming investigation in order to resolve it.

This proposed rule also removes the deadline for notifying complainants and recipients of receipt of a complaint against the recipient and for reviewing a complaint for acceptance, rejection, or referral to the appropriate federal agency. Currently, the EPA’s notification regulation requires the EPA to notify the complainant and the recipient of receipt of a complaint within five calendar days under 40 CFR 7.120(c). The current regulations also require the EPA to initiate complaint processing procedures by conducting a jurisdictional review to determine whether to accept, reject, or refer a complaint within twenty calendar days of acknowledgement of the complaint.

The current regulatory provisions imposing a deadline on complaint notification and jurisdictional review are unique to the EPA. This proposed rule removes these deadlines and, as with complaint investigations, it proposes that the EPA will “promptly” acknowledge receipt of a complaint and issue a decision on whether a complaint is accepted, rejected, or referred. The substitution of “promptly” for specific deadlines ensures EPA has the flexibility to improve its External Compliance and Complaints Program. The EPA believes this removal is not only reasonable, but will provide EPA with the flexibility and time necessary to complete a comprehensive and thorough initial review to identify the most appropriate path to resolve the complaint. Although, as reflected in the regulations of more than twenty other federal agencies, it is not common practice to include specific deadlines, the EPA is fully committed to processing complaints and compliance reviews expeditiously. In fact, the EPA intends, like other federal agencies, to create internal procedures and policies to provide guidance to staff, including the expectation that a determination of what constitutes reasonably prompt action varies based on the stage of administrative processing. For instance, a purely administrative task, (such as, issuing an acknowledgment of a correspondence), will take significantly less time than the more complex and nuance evaluation associated with conducting jurisdictional reviews, investigations and compliance reviews. Nonetheless, as discussed above with complaint investigations, because of the volume and complexity of the complaints that the EPA receives, these self-imposed regulatory deadlines have proven to be impracticable, even at these early stages.

C. Paperwork Reduction Act Technical Correction

The EPA proposes to remove the reference to expired OMB control number 2000-0006 which currently appears after the text of 40 CFR 7.80 and 7.85. The OMB control number for the collection of information under the EPA's 40 CFR part 7 regulations is OMB control number 2030-0020. Because no person is required to respond to an information collection request regulated by the Paperwork Reduction Act unless a valid control number assigned by OMB is displayed in 40 CFR part 9, another part of the Code of Federal Regulations, a valid federal Register notice, or by any other appropriate means, the EPA proposes to add the citation for the OMB control no. 2030-0020 and the provisions in 40 CFR part 7 under which the OCR collects information from applicants and recipients to the table located in 40 CFR part 9. These technical corrections will provide clarity to applicants and recipients of EPA assistance regarding which Information Collection Request control number applies to the EPA's requests for information under 40 CFR part 7.

III. Statutory and Executive Orders Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an analysis of the potential costs and benefits associated with this action. A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule will allow the EPA to enforce civil rights laws. It therefore falls under the exemption to the Paperwork Reduction Act found at 44 U.S.C. 3518(e) that exempts agencies from Paperwork Reduction Act requirements when they are exercising their substantive enforcement authority regarding civil rights laws. Even though this action is covered by the section 3518(e) exemption, this action is covered by an Information Collection Request that was approved by the Office of Management and Budget in June 2015. The information collection request contained in the existing regulations at 40 CFR part 7 was assigned OMB control number 2030-0020. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The deadline and technical amendments being proposed are not expected to have a direct impact on any grant recipients. The direct cost to any particular entity under a compliance review will not increase because they already are potentially subject to compliance reviews under the existing regulations. The impact of the proposed amendments related to compliance report requirements for any particular entity would only be the cost of assembling data and information that it already must collect and maintain under the existing regulations. We have therefore concluded that this action will have no net regulatory burden for

all directly regulated small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. (See Economic Analysis in the docket for this rulemaking for more detailed information on potential impacts.)

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues relating to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain any mandate as described in UMRA, 2 U.S.C. 1531 through 1538, and does not significantly or uniquely affect small governments. Because this proposed rule enforces statutory rights that prohibit discrimination as described in the exception at 2 U.S.C. 1503(2), it is not subject to the requirements of section 202 or 205 of the UMRA.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits

comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed rule does not directly impose any new obligations on the federally recognized tribes that receive or apply for EPA financial assistance. Moreover, the proposed rule would not impose compliance costs on tribes or preempt tribal law. Therefore, consultation under Executive Order 13175 is not required.

However, EPA welcomes the views of tribes and is interested in considering any comments that tribes may offer on the proposed rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA believes that improving its External Compliance and Complaints Program will have a positive impact on the agency's efforts to advance environmental justice. More precisely, by bringing the EPA's regulations into alignment with the regulations of more than twenty other agencies, the EPA will have the regulatory tools necessary to exercise its discretion to make the complex determination of what sorts of disparate impacts upon communities constitute "sufficiently significant social problems," and are "readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts." *Alexander v. Choate* 469 U.S. 287, 293-294 (1985). Such regulatory tools also will improve the EPA's External Compliance and Complaints Program by forging an appropriate path to resolution tailored to the specific facts and circumstances of each matter. However, the EPA welcomes comments from minority, low-income or indigenous populations about these proposed regulatory modifications.

List of Subjects

40 CFR Part 7

Environmental protection, Administrative practice and procedure, Age discrimination, Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 1, 2015.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, the EPA proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

1. The Authority citation for part 7 continues to read as follows:

Authority: 42 U.S.C. 2000d to 2000d-7 and 6101 *et seq.*; 29 U.S.C. 794; 33 U.S.C. 1251nt.

Subpart D - Requirements for Applicants and Recipients

§ 7.80 [Amended]

2. Section 7.80 is amended by removing the parenthetical citation “(Approved by the Office of Management and Budget under control number 2000-0006)” following paragraph (c)(3).

3. Section 7.85 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively, and adding a new paragraph (f); and

c. Removing the parenthetical citation “(Approved by the Office of Management and Budget under control number 2000-0006)” following the newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 7.85 Recipients.

* * * * *

(b) *Additional compliance information.* If necessary, the OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance. Requests shall be limited to data and information which is relevant to determining compliance.

* * * * *

(f) *Compliance reports.* Each recipient shall keep such records and submit to the OCR timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the OCR may determine to be necessary to enable the OCR to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Agency the racial composition of affected neighborhoods. In the case in which

a primary recipient extends federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this Subpart.

* * * * *

Subpart E - Agency Compliance Procedures

§ 7.110 [Amended]

4. Section 7.110 paragraph (a), fourth sentence is amended by removing “only when it has reason to believe that discrimination may be occurring in a program or activity which is the subject of the application”.

§ 7.115 Postaward compliance.

5. Amend § 7.115 by revising paragraphs (a) and (c)(1) to read as follows:

(a) *Periodic review.* The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews.

* * * * *

(c) * * * (1) The OCR will notify the recipient in writing by certified mail, return receipt requested, of:

* * * * *

6. Amend § 7.120 by revising the introductory text and paragraphs (c) and (d)(1)(i) to read as follows:

§ 7.120 Complaint investigations.

The OCR will make a prompt investigation whenever a complaint indicates a possible failure to comply.

* * * * *

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's receipt of the complaint.

(d) * * *

(1) * * * (i) After the acknowledgment, the OCR will promptly review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

* * * * *

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

7. The Authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 F.R. 21243, 3 CFR 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

8. In § 9.1, the table is amended by adding the heading titled "Nondiscrimination in Programs or Activities Receiving EPA Assistance" and entries 7.80, 7.85, 7.110, and 7.115 above the heading "Protection of Human Subjects" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.

Nondiscrimination in Programs or Activities Receiving EPA Assistance	
7.80	2030-0020
7.85	2030-0020
7.110	2030-0020
7.115	2030-0020

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[FR Doc. 2015-31050 Filed: 12/11/2015 8:45 am; Publication Date: 12/14/2015]